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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

JUAN PAUL FLORES,)	
)	
Plaintiff,)	
)	Civil Case No. 14-CV-184-S
vs.)	
)	
GEORGE MENIG,)	
)	
Defendant.)	

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Defendant Menig, and hereby files his Answer and Affirmative Defenses to the Plaintiff's Complaint as follows:

Introduction

1. Paragraph 1 contains improper legal and factual assertions and should be stricken. To the extent a response is required, Defendant Menig denies the allegations contained in Paragraph 1.

Jurisdiction and Venue

2. The allegations contained in paragraph 2 of Plaintiff's Complaint call for a legal conclusion and do not require an answer. To the extent an answer is required, Defendant Menig admits that Plaintiff asserts claims under those statutes and the Constitution and denies any other allegations.

3. The allegations contained in paragraph 3 of Plaintiff's Complaint call for a legal conclusion and do not require an answer. To the extent an answer is required, Defendant Menig admits that this Court has jurisdiction of federal and constitutional claims and denies any other allegations.

4. Defendant Menig admits that this Court has jurisdiction over the claims alleged in the Complaint.

Parties

5. Defendant Menig is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5, and therefore denies the same.

6. Defendant Menig admits that he is and was a resident of Wyoming and a sworn peace officer employed by the Cody Police Department at all times relevant to the Complaint. The remaining allegations contained in paragraph 6 of Plaintiff's Complaint call for a legal conclusion and do not require an answer.

7. Defendant Menig admits that the Complaint asserts claims against him in his individual capacity.

8. The allegations contained in paragraph 8 of Plaintiff's Complaint call for a legal conclusion and do not require an answer.

Facts Common to All Causes of Action

9. Defendant Menig incorporates his answers to paragraphs 1 through 9 as if fully set forth herein.

10. Defendant Menig admits that the officer was flagged down by the Plaintiff and that the Plaintiff threatened to "blow things up" but denies that this description represents the totality of the circumstances present and therefore denies all remaining allegations.

11. Defendant Menig denies the allegations contained in Paragraph 11.

12. Defendant Menig denies the allegations contained in Paragraph 12.

13. Defendant Menig denies the allegations contained in Paragraph 13.

14. Defendant Menig denies the allegations contained in Paragraph 14.

15. Defendant Menig denies the allegations contained in Paragraph 15.

16. Defendant Menig denies the allegations contained in Paragraph 16.

17. Defendant Menig denies the allegations contained in Paragraph 17 a-c.

First Cause of Action: 42 U.S.C. § 1983; Fourth Amendment

18. Defendant Menig incorporates his answers to paragraphs 1 through 18 as if fully set forth herein.

19. Defendant Menig denies the allegations contained in Paragraph 19.

20. Defendant Menig denies the allegations contained in Paragraph 20.

21. Defendant Menig denies the allegations contained in Paragraph 21.

22. Defendant Menig denies the allegations contained in Paragraph 22.

23. Although there is a numbered paragraph 23, there is no allegation and no response is necessary.

Prayer for Relief

Defendant Menig denies that the Plaintiff is entitled to any relief and denies the claims asserted in paragraphs (1) through (5) of the Prayer and asserts that the damages sought is improper, is not supported by the facts alleged and should be stricken.

AFFIRMATIVE DEFENSES

1. All actions taken by Defendant Menig were privileged and authorized by law.
2. Plaintiff fails to state a claim upon which relief may be granted.
3. Defendant Menig is entitled to qualified immunity and/or “good faith” qualified immunity.
4. Plaintiff has failed to mitigate his damages.
5. Plaintiff’s Complaint fails to state a claim upon which relief may be granted to the extent Plaintiff fails to allege a violation of the Fourth Amendment by Defendant Menig.
6. All of Defendant Menig’s actions were within the course and scope of his duties and all actions, inactions, or omissions were privileged, authorized by law, and reasonable in light of his training and the totality of circumstances.
7. Each and every action taken by Defendant Menig with respect to the Plaintiff were undertaken in good faith and were based upon good cause, consistent with the laws of the United States, and Wyoming statutes.
8. The injuries and alleged damages complained of by the Plaintiff were caused by the Plaintiff over which Defendant Menig had no control or are the result of pre-existing conditions, which were not caused by Defendant Menig.

9. Any alleged acts or omissions on the part of Defendant Menig were not the proximate cause of Plaintiff's injuries.

10. To the extent Plaintiff's claim for punitive damages, award of punitive damages against Defendant Menig violates the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 6 and 14 of the Wyoming Constitution.

11. Defendant Menig reserves the right to assert additional affirmative defenses, as they become known.

WHEREFORE, Defendant Menig respectfully request that the Plaintiff's Complaint and the claims for relief stated therein be dismissed with prejudice, that Defendant Menig be allowed his costs, including reasonable attorney fees, and for such other and further relief as the Court deems appropriate.

DATED this 14th day of November, 2014.

/s/ Misha E. Westby

Misha E. Westby

Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed using the CM/ECF system on the 14th day of November, 2014, and a copy was sent via email to the following:

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